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**TERRITORIAL WATERS OF GREECE
AND
AIR/MARITIME NAVIGATION**

by

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Preface

The Aegean Sea, with thousands of islands and its unique geographical place, has a huge importance for Greece. In recent years, it has gained more significance because of both the illogical demands and the expansionist policy of Turkey, and requires special consideration as far as it influences the Defense of Greece.

In this research I will examine the regime of the Territorial Waters of Greece through the International Law and how it is shaped under the prism of the new convention about the Sea Law.

My research contains five chapters as follows:

In the first chapter, the introduction, I describe the situation on Aegean Sea as well as define the problem between Greece and Turkey. In the next chapter I analyze the terminology and the limitations of the Territorial Water and I search the regime of the Aegean Islands as well as the sovereignty of the off-shore country over the national sea. In the third chapter I refer to the term Innocent Transit and I research the right of ships to sail through the territorial waters of another country. In the fourth chapter I delineate the history of the Greek-Turkish disagreements over the Aegean Sea and I research the regime of the “baselines” as well as the extension of the Territorial Waters and the Airspace of Greece from 6 to 12 nautical miles. Finally, in the fifth chapter I describe my conclusions of the present research.

Abstract

The Aegean Sea, with its thousands of islands and unique location, has a huge geo-strategic importance for Greece. Especially, in recent years it has gained more importance and constitutes an issue for serious study for two reasons: First, the illogical claims for Turkish domination over the Aegean Sea and second the importance of its role to the National Defense of Greece. The relations between coterminous countries, especially those that have a sea in between, are defined by the norm of the International Law. These norms spring mainly from International treaties for both Sea Law and Maritime Customs. According to Law of the Sea Convention (LOSC), Montego Bay 1982, the off-shores countries have the right of extension of their territorial waters up to 12 nautical miles. The Greece desires to apply this norm, but the Turkey considers that as *casus belli* (cause of war) threatening her.

In my research paper I will examine the Territorial Waters and the Innocent Transit of ships/aircraft in and on them according to LOSC in order to prove that its appliance, the extension of Territorial Waters to 12 miles, will eliminate the Turkish claims and it will positively augment the National Defense of Greece. Of course, all these above with two preconditions. First, the LOSC will remain valid and some modifications will not change its basic integrity. Second, the propose for its (LOSC) appliance, extension of Territorial Water to 12 miles, will not be considered as political benefit being exploited by the governing party but as National Interest.

Chapter 1

Introduction

The relations among the neighboring countries, especially with sea between them, are conditioned by the rules of the International Law. These rules mainly spring from both the international conventions for the Sea Law and maritime customs. Although, many times, the practice of the maritime-power countries, the jurisprudence of the Hague Tribunal, and famous international law experts' opinion were and are one supplementary spring from the International Law. But, these springs do not constitute written legislation and consequently are unofficial. Only the international conventions, which are sanctioned by the signatory countries and become their law, constitute written official legislation of the International Law. In that, there is uncertainty and different regulation of relevant issues and in many cases countries exploit them according to their interests.

The United Nations (UN) recognized the need of covering all the issues with international conventions and, since 1947, they chartered a committee dealing with the relevant plans. In 1957, the first plan for the Sea Law was ready and constituted the basis for the Geneva conference, in April 1958, that resulted in the formation of four conventions. These conventions covered, among many, the Territorial Waters issue establishing the rights of the off-shore country on its territorial waters and what defines

“innocent transit passage”. In 1960, the second conference established the exclusive fishing right of the off-shore country in a zone up to 12 nautical miles.

Since November 1994, the new Law of the Sea Convention (LOSC) is valid because all the necessary precondition of the articles 306 and 308 were fulfilled:

The sanction of the convention from 60 countries, which was done in November 1993.

The lapse of 12 months after the submission of the 60th application for ratification or access.

The new LOSC had been signed in 10 December 1982 at the Montego Bay after the finish of the third conference of the UN (United Nations Conference on the Law of the Sea – UNCLOS III). Greece was among the countries, which ratified the convention. Of course there are countries which did not ratify but signed the new convention such as Turkey. These countries, according to Vienna convention (1969, L.D. 402/O5-23-74) for the Convention Law must:

Be compliant with the rules of the Common Law, either they are included or not in the text of the convention.

Avoid actions against a country, a member of the convention, which insult the convention (according to article 18, Vienna 1969, L.D. 402/O5-23-74).

The most important new regulations in the convention are:

Although the word “Archipelago” is Greek and it was used by the Venetians to define the geographical region of the Aegean Sea, the Archipelago regime (fig.1) is not applied to the countries with mixed territorial existence (continental and island) according to the paragraph (b) of the article 46. Such countries are both Greece and Turkey and cannot apply the Archipelago regime but they must measure their Territorial Waters for each Island separately.

The off-shore country has the right to consider as violence of the regulations the refloating, within its Territorial Waters and without its permission, of historical value objects from a neighboring country, according to article 303.

It is allowed the free “transit passage” of both ships and aircraft through and over the International Waters.

The extension of the Territorial Waters of the country, including her islands, to 12 nautical miles. Consequently, Greece has the right to extend her Territorial Waters.

The economical exploitation of the sea and its bottom from the off-shore country within its territorial waters.

Finally, the new convention, according to article 309, forbids any action under protest against its rules. Such an action can be considered the threat of Turkey against Greece, in case the latter will extend her Territorial Waters to 12N.M.

So, the issue of my research is the Territorial Waters of Greece and the Air/Maritime Navigation. I will examine the Territorial Waters and the ‘transit passage’, according to both the International Law and the Montego Bay Convention, in order to prove that with the extension of the Territorial Waters of Greece to 12 nautical miles the illegal claims of Turkey, over the Aegean Sea, will stop and the National Defense of Greece will positively be improved.

I will approach the topic through the Territorial Waters, the “innocent transit”, the Greek-Turkish disputes over the Aegean Sea, and finally I will formulate my conclusions.

Chapter 2

Territorial Waters

Definitions

Territorial Waters or National Sea or National Waters are the off-shore zone which is extended from the “straight baseline” or the coast line into the sea up to 12 N.M. (fig.2).

Straight baseline, according to article 8 of the Montego Bay Convention, is the line which is formed by joining the very end sea bound points of the small islands or isles, close to continental territories of a country. The waters encircled between the shore and the “straight baseline” are called “internal waters” (fig. 5). In cases where there are no islands or isles then the straight baseline joins the very external points of the indentations of the continent (fig.6).

Since the 16th century, according to both sea customs and theory, the off-shores countries were estimating the territorial waters not from the “straight baselines” but from the shores and were exercising power over them. But, there was the ambiguity if this power had sovereignty or jurisdiction over both control and exploitation. Specifically, the states accepted the regime of the rights of other countries into their Territorial Waters, which resulted in the distortion of the state’s ultimate sovereignty over its own waters. Indeed, these states were self-limited and accepted other countries exercising their rights, while these kept the right of imposing their rules, into their national sea, with the

precondition that they in accordance with International Law. For the sea it means the respect of the free transit passage, namely the right of countries to relish the privilege of free communication and trade. So, the off-shores countries had exclusive authority about the policing (custom, public health, security, and protection of the environment) and economical exploitation (fishing and under the sea mineral wealth) into their Territorial Waters as well as the control of the airspace over them.

Currently, the sovereignty of the off-shore country, according to Geneva Convention of 1958 (article 1) and Montego Bay Convention of 1982 (article 2), is exercised into its Territorial Waters but must be according to the rules of the International Law. Consequently, the Territorial waters of a country are an integral part of its Continental Territories and no other country can negate or reject the specific rights and obligations assigned to the off-shore country by International Law. In addition, this sovereignty of the off-shore country is expanded from the subsoil to the airspace over its Territorial Waters (article 2, Montego Bay Convention, 1982). Namely, it is formed an imaginery pillar being extended from the coast to 12 N.M. (fig. 4).

The basic ambiguity about the sovereignty of the off-shore country over its Territorial Waters is substantially posed to the “transit passage” (article 17, Montego Bay Convention, 1982), namely the right of the “innocent transit” of ships, from all countries, through the Territorial Waters of another country. So, the Montego Bay Convention invented the solution of the “transit passage” in order to, on one hand, ensure the security and the sovereignty of the off-shore country and, and on the other hand, to ensure the right of free sailing from the other countries. Later, in the chapter 3, I will analyze this in detail.

Measuring the Territorial Waters

There are two methods for the definition of the Territorial Waters. Both of them use as starting point the “low-water line” which was counted during the low tide and was depicted in the maps of each off-shore country (article 5, Montego Bay Convention, 1982). The first method is called “normal baseline” and is used when there are no indentations or isles close to coast (fig. 6). In this method, the Territorial Waters are extended from the “low-water line” to 12N.M. (article 3, Montego Bay Convention, 1982). The second method it is called “straight baseline” and is used when there are indentations or isles or islands close to coast (fig. 5). In this method, the Territorial Waters are extended from “low-water line” to 12N.M. (article 6, Montego Bay Convention, 1982). Both of methods are legal and can be used by states to measure their Territorial Waters.

According to article 14 of the Montego Bay Convention, the “straight baseline” includes in the “internal waters”, in addition to isles or islands, and the follows:

River mouths (article 9), like Evros river in the borders between Greece and Turkey.

Gulfs or bays with indentation up to 24N.M into the continent (article 10). Turkey does not follow this rule in the measurement of her Territorial waters in East Thrake shores (Saros Bay, fig.7) while Greece follows it in all cases (e.g. Thermaikos Gulf, fig.7).

Permanent port installations including breakwaters and docks (article 11).

Although the Geneva Convention for the Territorial Waters was referred to “straight baselines”, the states were construing the issue according to their own interests and violating the rules. The new Convention of 1982 makes the issue absolutely clear (article 7) but some states, which defined their “straight baselines” years ago, are not in

compliance with it evoking vague terminology and construing the geographical peculiarities to their profit.

The Hague Tribunal determined that states have the autonomous right of choosing the methodology for defining the National Waters, but this right is not unlimited and is subjected to the control by the rules of the International Law because the issue influences neighboring states. It means that the selection of the method by the states must be according to both Montego Bay Convention and Hague Tribunal while the internal legislation of the states and the International Law must be in harmony.

The methodology for determination of Territorial Waters is of great importance and states prefer the “straight baseline” method because they have the possibility of dominating much more sea expanses. The International Law determined as a fundamental principle, for the definition of the sea zones between bordering states, the “equitable principle”. According to this principle, whenever there is a controversy about the sea zones between bordering countries then they have the right of appealing to the Hague Tribunal, which will resolve the controversy based on the Montego Bay Convention.

The regime of the islands

According to the International Sea Law, the geographical term “island”, namely the patch of land which is completely surrounded by the sea and is on it during the tide, has legal status and consequently has its own Territorial Waters.

Also, the term “island” presents a variety because one can consider as islands the Australia, Great Britain, and many others such countries irrespective of their size. This element (size) is substantially not clarified by the Montego Bay Convention but it is

referred the difference between island and rock. According the article 121(3), rock is a patch of land which resembles an island, it is not a reef or shelf, and there is no living conditions or economic life **but** it has the right for Territorial Waters and border zone.

The importance of the islands and rocks is determinative for the countries, and of course for Greece and Turkey, because:

They participate in the methodology of measuring the Territorial Waters. When the island or rock is within the “internal waters” then the Territorial Waters are measured with starting point the “low-water level” of the island or rock and consequently the off- shore country gains more sea. When the island or rock is out of the “internal waters”, then it has the right of its own Territorial Waters depending on the distance from the Continental Territories of the country. Then, there are formed or not International Waters where the other countries have the right of completely free sailing in. Among them or between them and the continent of the country are formed narrows that are called International Sailing Strait and there is specific regime of sailing through them.

All these above are for benefit of Greece because is a county with plethora of islands and isles, and consequently applying them increases her sovereignty over more part of Aegean Sea.

The sovereignty of the off-shore state on Territorial Waters

The LOSC gives full sovereignty to the off-shore state, according to the article 21, for the following issues:

The safety of the sailing and the control of sea traffic.
The protection of the cable conduit.
The conservation of the living sea treasure.
The prevention of the rules, about fishing, from the violence.
The protection of the environment and the prevention, reduction, and control of the pollution.
The sea scientific research and the hydrographic mapping.
The prevention of the customs, financial, emigration or sanitary laws from violence.

So, Greece, extending her Territorial Waters, will have ultimate sovereignty over them, namely she will both control and exploit the biggest part of Aegean Sea. Simultaneously, she will improve her National Defense because only a small patch of the Aegean Sea will remain as international waters or airspace, and consequently, the possibilities of other countries to collect military information about Greece using aircraft or battleships will be limited.

The new Montego Bay Convention and specifically article 22 gives the authority to the off-shore state to request, if it is needed, the “innocent transit” passage from foreign ships sailing through its Territorial Waters. In addition, the off-shore state has the responsibility of publishing the maps of its Territorial Waters in order to inform foreign ships. Finally, it has the authority of exercising penal (article 27) or civic (article 28) jurisdiction over foreign private or state trading ships.

As far as battleships are concerned, the off-shore state is in a weaker position for possible offenses (violation of LSCO rules) committed by them through their “innocent transit passage”, because they are considered elements of the foreign country and consequently, according to articles 31 and 32, the compensation for damages is an interstate issue without any intervention of International Law. As example, if a battleship of a country sailing through foreign Territorial Waters collides with a commercial ship of the sovereign country then the indemnification is an issue between states and it is much more difficult to be resolved than in case with collision of two commercial ships where the problem comes between companies.

Chapter 3

Innocent Transit Passage

Definition

The “innocent passage” through the Territorial Waters of a country, as it is defined at the articles 18 and 19 in the Montego Bay Convention, is a right of all ships, namely commercial, passenger, any kind of battleships, submarines, pleasure boats, and scientific. In contrast, this is not a right for any kind of aircraft flying over the National Airspace of a country. The problem here was the vertical limits of a National Airspace because it influenced the orbits of the satellites. So, the new Convention, being based on the aerodynamic and the altitude in which an aircraft can fly, defined the vertical limits of the National Airspace up to 50 Kilometers above the ground level (AGL) because the minimum level of the satellites is 100 kilometers AGL.

Consequently, the “passage” and the “innocent” are two elements that must coexist in order for the right of the ships, sailing through the Territorial Waters of a country, to be legislated.

The “passage” as a right

According to Montego Bay Convention of 1982, as far as the “passage”, of the ships through the Territorial Waters of a country is concerned, the following are valid:

It must be constant and quick, article 18(2).

The ships can switch off the engines or to be anchored only in case of an emergency, article 18(2).

The ships can sail through the Territorial Water but **not** through the “internal waters” of the country, article 18(1)(a).

The ships must have direction inbound or outbound from a port installation, article 18(1)(b).

The submarines must be emerged showing their flags, article 20.

It does not limit the sovereignty of the off-shore country which can take measures to prevent the violation of the rules above, article 25(2).

As a result of all these above, Greece extending her Territorial Waters increases her sovereignty over a large part of Aegean Sea controlling every ship that sails through them (Territorial Waters).

The “innocent” as a right.

The “innocent”, according to Montego Bay Convention, is the obligation of ships of the countries sailing through the Territorial Waters of another country. The “innocent” means that the ships must avoid every action, which is considered a breach of the peace, order, and security of the off-shore country, article 19(1). Specifically, violation of the “innocent” is considered when the ships sailing, through the Territorial Waters of a country, pose danger to the interests of the off-shore state, namely when they do the following actions [article 19(2)]:

Threat or use of violence against the sovereignty, both territorial and political, of the off-shore state or violation of the rules of the International Law which are included in the map of United Nations.

The use of weapons in every kind of military exercises.

Every action intended to collect of information about the defense and security of the off-shore state.

Every action of propaganda against the defense and security of the off-shore state.

Take off or landing of aircraft or helicopters which are carried by ships

The launch of every kind of military device.

Every intentional action of sea or air pollution.

Transaction of searching or hydrographic works.

Every action intending to harass the communication system of the off-shore state.

Every kind of fishing work.

Every action which is irrelevant to the “passage”.

Consequently, all ships sailing through Territorial Waters of Greece must comply with the article 19(2) of Montego Bay Convention, which means that Greece extending her Territorial Waters increases her National Security because she will control every military action within them.

The jurisdiction of the off-shore state.

The “innocent passage” is right of the countries to use the Territorial Waters of other countries without the security of the off-shore state being at stake. But the Montego Bay Convention of 1982 put a “safety valve” providing jurisdiction to the off-shore state according to which the off-shore state can:

Take the necessary measures to prevent the “passage” when it is not “innocent”, namely when a ship does one or more of the actions prescribed above, article 25(1).

Suspend the right of the “innocent passage” temporarily and in specific areas for national safety reasons or in case of military exercises with the prerequisite of notification to other countries, article 25(3).

Apply corridors and rules of separation of sea traffic in order to ensure the safe sailing, article 22(1). But, all the corridors and rules must be depicted in maps which the off-shore state is obliged to both publish and announce to all the other countries, article 22(4).

Actually Greece, according to all these above, extending her Territorial Waters will increase her control over the largest part of Aegean Sea, taking measures, suspending the right of the “innocent passage”, and applying safety rules when she judges that her sovereignty or the rules of Montego Bay Convention are at stake or violated.

The “innocent passage” of the battleships.

Another specific, but basic, issue is the “innocent passage” of the battleships through the Territorial Waters of a foreign country. While the issue of submarines, as I referred above, was solved by the Convention of 1982, the issue of battleships has been the main object in talks among the countries during the Geneva Conference as well as the Montego Bay Convention because of the arguments that were among them.

While the theorists converge on the point that the Montego Bay Convention of 1982 left the issue open, none the less the practice of the countries came to form this specific regime. The Great Sea Powers accept the right of battleships for “innocent passage” through the Territorial Waters of a country. But, a number of states demand from the foreign battleships, while sailing through the Territorial Waters, either a simple notification or an issue of relevant permission. In addition, these countries have legislated relative law. As far as Greece is concerned, she did not legislate relative law but accepts the right of battleships for “innocent passage” without demanding any notification or permission.

Yet, the regime of the battleships for “innocent passage” can be considered the same that goes with the regime of the civilian ships, as for their commitment to not harass the interests of the off-shore state, because the Montego Bay Convention defines:

The battleship which does not comply with the rules and regulations of the off-shore state, then it (off-shore state) can ask for the battleship to leave immediately its Territorial Waters, article 30.

The country to which the battleship belongs to, according to the flag raised on it, carries the international responsibility toward to the off-shore country for any violation or negation by the battleship to comply with the rules and regulations enacted by it (off-shore state), article 31.

Today Turkish battleships, with Greek's Territorial Waters at 6N.M., sail through Greek Islands using the international waters having the right of warfighting status or collecting information. But, with the extension of Territorial waters of Greece to 12N.M. the international waters, in the Aegean Sea, will significantly be limited and Turkish battleships would sail through Greek Islands under the rules of "innocent passage". In case that they will not comply with it, Greece will have the right to apply the above list.

Chapter 4

Greek-Turkish Disputes Over Aegean Sea

Background

The Aegean Sea, as a sea-basin with length 640Km and width 320Km, constitutes the passage for the Strait of Hellespont and from there to the Black Sea. Thousand of islands belong to Greece while Turkey possesses Imbros, Tenedos and Lagouses as well as all the islands which are in a distance smaller than 3N.M. from Asia Minor. These islands were given to Turkey according to article 12 of the Lausanne Treaty of 1923. As for the Asia Minor shores as well as the three islands Imbros, Tenedos and Lagouses Turkey declared on 15 May 1964, legislating the Law 476, their Territorial Waters with a zone of width 6N.M. which she measures being based on a range of “straight baselines” including a part of Asia Minor shores and the three islands.

“Straight baselines” on the Aegean Sea.

The “straight baselines” are referred to the article 4 of the Geneva Convention of 1958, which is not sanctioned by both Greece and Turkey, as well as article 7 of the Montego Bay Convention of 1982, which was sanctioned by Greece but not by Turkey. Consequently, I will examine the legitimacy of Turkish “straight baselines” through the field of Common Law.

The 1951 Hague Tribunal, determined for the English-Norwegian dispute about fishing that the “straight baselines” constitutes Common Rule of the International Law and defined the following:

The “straight baselines” must not diverge from the general direction of the shores.

The sea patches enclosed by “straight baselines” must be close to shores in order to be considered as “internal waters”.

For the tracing of the “straight baselines” must be taken into account the economical interests of the off-shore state on the region entailed by the long term exploitation of it (region).

The Turkish “straight baselines” in no way can be characterized as legal because:

They do not follow the general coastal direction and especially in the North Aegean, where in order, the islands Imbros, Tenedos and Lagouses to be included in the Territorial Waters of Turkey a crooked line is followed, article 7(3).

In the above region the baseline, which encircles the three islands, is far away from the shores resulted in including patches of open sea, namely International Waters, article 7(1).

It does not seem that economical interests, in the region, have been taken into account in order to be considered as long term use, article 7(5).

In addition, except that all these above do not follow the Common Law, the Turkish “straight baselines” are not accepted for two reasons. First, while the “straight baselines” are applied to simplify the tracing of the sea borders between two countries, in the case of the Asia Minor islands, in virtue of the small distance from the Greek islands, they make that significantly difficult. Second, the Turkish “straight baselines” encircle the Hellespont Strait where, while the free passage now is ensured by the Mondre Treaty, who can ensure that Turkey, in a specific time in the future, will not try to impose an her own arbitrary regime in the region?

Greece sanctioned the Geneva Convention of 1958, for the continental shelf, enacting the Law 1182 on 14 June 1972. But, she formulated the cautiousness that

Greece will follow the method of “normal baseline”, in order to measure her continental shelf, because of the lack of international consensus. Yet, in the Law 230 on 17 September 1936, which defined the width of Territorial Waters as 6N.M., it is not stated which method will be applied. From there, Greece used in all cases the “normal baseline” method, although the “straight baseline” method was ultimately legal. The point is that if Greece had used the “straight baseline” method then she would have won a large part of the Aegean Sea because of her particular coastal line.

The Territorial Waters in the Aegean Sea.

Turkey, with the Law 476 on 15 May 1964, defined her Territorial waters to 6N.M. using the “straight baseline” method. Article 2 of the same Law was referred that the Turkey will extend her Territorial Waters in case the other countries will do the same.

On 20 May 1982, Turkey with the Law 2674 defined again the width of her Territorial Waters to 6N.M. in the Aegean Sea being measured with the use of the “straight baseline” method according to Council of Ministers, which is the official instrument for the issue. Also, in 1982, with the Resolution 8/4672, she defined her Territorial Waters in both Mediterranean and Black Sea to 12N.M.

Another important point is the bordering areas where the distance between Greece and Turkey is smaller than 12N.M., as well as the Evros region where the shores of the two countries are adjoining. The only region for which there is consensus is the area from the Samos to Kastelorizo islands where the borders had been officially defined in the treaty between Turkey and Italy on 4 January 1932. These borders were also recognized by Greece and Turkey with the Law (Turkish) 518 on 3 January 1948 about the annexation of Dodecanese islands to Greece.

In the areas where there is no treaty the use of Common Law is deemed necessary according to the Geneva Convention about Territorial Waters-border lines and the Montego Bay Convention about the Sea Law. Where the shores between the two countries are adjoining or opposite then neither one can extend its Territorial Waters beyond the “middle line”, every point of which is in the equal distance between the closest points of the “baselines” used for measuring them (Territorial Waters).

The problem is that for the definition of Territorial Waters Greece used the “normal baselines” while Turkey used the “straight baselines” defined arbitrarily. I already referred above that the Turkish “straight baselines” are illegal and consequently they must not be used to measure her Territorial Waters. Namely, the fair method is that the measuring starting point must be the “low-water line” and not the baselines for both countries.

The region where there is no consensus are the Evros, the area between Lesbos and Asia Minor, the area among Chios-Oinouses-Asia Minor, the area between Samos and Asia Minor, and Kastelorizo.

The extension of Territorial Waters to 12N.M.

Since 1956 the committee of the International Law has defined that no country has the right to extend its Territorial Waters beyond to 12N.m. Although, in the first and second conference no rule passed and the committee rejected the Russian proposition for establishment Territorial Waters of 12N.M. for all countries. In the third conference the limit of 12N.M. defined as *opinio juris* (in the will of the country).

As far as the practice is concerned, the overwhelming majority of the countries recognized the limit of 12N.M. for Territorial Waters and there is no doubt that the 12N.M. is at the same time the rule of Common Law.

According to International Law there is no obstacle for the extension of Territorial Waters to 12N.M. for both Greece and Turkey. It is noted that Greece, according to article 2 of the Montego Bay Convention and her ratifying Law 2321 on 23 June 1995, declares that she has the indefeasible right to extend her Territorial Waters to 12N.M. anytime she wants. With this extension Turkey has little to lose while Greece gains a lot. This is the reason why Turkey constantly threatens Greece and yet a law was passed by the Turkish Cabinet that such action on the behalf of Greece is *casus belli* (cause of war). It is important that Turkey, during the third conference for the Sea Law, tried to pass a provision for the closure or semiclosure seas, such as Aegean Sea, according to which the Territorial Waters could be defined only after the consensus of the neighboring countries. Of course this Turkish preposition was ultimately rejected.

Greece with her Territorial Waters to 12N.M. (fig.8) could include a large portion of the Aegean Sea - about 67% of it would fall under Greek dominion. In the northern part of the Aegean Sea a big patch would remain International Waters while in the middle and south parts it could not because of the small distances among the Dodecanese islands. All this above means that the sailing narrows would be limited **but** with the right of “transit passage”, through the Territorial Waters, in force.

The National Airspace of Greece.

Nowadays, the Air Law tries to obtain a relevant independence from the Sea Law into the field of the International Law. So, it is not strange that some countries have a

different width between their Territorial Waters and Airspace. This is not considered illegal if the width in both cases is not beyond the 12N.M.

Greece enacted the width of her Airspace to 10N.M. according to Presidential Degree 6/18 September 1931 after the authorization from the articles 2 and 9 of the Law 5017 about civilian aviation on 13 June 1931.

According to International Law, there is no term of “innocent passage” of aircraft through the Airspace of a foreign country. The participation of the countries in international conventions, which deal with the issues of Airspace, ensures the right of “innocent passage” of aircraft according to international rules for flight safety. As an example, the aircraft of the countries which are not members of the Chicago Convention cannot fly into the airspace or land at the airports of another country without the permission of the Ministry of Transport and Communications.

Foreign military aircraft are not allowed to enter Greek Airspace without permission of the Ministry of Defense which can pose terms concerning the navigation they will follow or the time they will stay into it (airspace). In application, the permission above must necessarily have written both the elements and the characteristics of the communication devices of the aircraft. During the flight into Greek Airspace it is forbidden for the aircraft to communicate with the ground stations of any country except Greek. In addition it is forbidden for the aircraft to carry photo or cine devices as well as weapons. The entrance of any military aircraft into Greek Airspace without permission is considered “violation”.

Turkey has never put forward any objection about the 10N.M. of Greek Airspace since 1931. But from 1975, through a climate of tensions and threats, she claims that Greek Airspace must be limited to 6N.M. according to Territorial Waters

Finally, I consider it important to refer that the illegal occupation of ground parts does not change the regime of the airspace of a country. One such case is the Republic of Cyprus where Turkey does illegally possess a ground part of hers while the whole Airspace of Cyprus remains the same under the control of “Nicosia F.I.R.”. So, while Turkey have occupied the one third of Cyprus Island the civilian aircraft flying over it do not refer to Turkish ground stations but to “Nicosia Control” that belongs to Greek part of Cyprus. This means that Turkey recognizes the airspace over occupied by her land as part of the rest airspace of Cyprus.

Chapter 5

Conclusions

The width of the Territorial Waters, according to article 3 of Montego Bay Convention, can be up to 12N.M. from the “baselines”. I will point out two important things contingent to Territorial Waters:

The islands and isles have their own Territorial Waters which can be extended up to 12N.M.[articles 121(2) and 123(3) of the new Convention].

The “transit passage” is a right of the ships to sail through the Territorial Waters of any country (articles from 34 to 44 of the new Convention).

The off-shores states have the right to close their “internal waters” using the “baselines” but the new Convention prevents the arbitrary action of such states providing to ships of all countries with the right of “innocent passage”[article 8(2)]. Namely, the new Convention recognizes the sovereignty of the off-shore state over its Territorial Waters while at the same time protects the International Shipping with the “innocent passage”.

The starting point for a state in order to measure its Territorial Waters can be either the “normal baseline” or the “straight baseline”. As for the tracing of the borders between two countries with shores next to each other or one opposite the other, the principle of the “middle line” (article 15) is applied unless something different has been agreed between them. This principle, according to Common Law, is called “middle distance” for the states with shores side by side while it is called “ equal distance” for

countries with facing shores. Whichever name is used, the article 15 defines the tracing that all the points of the borderline are in equal distance from the closer points of the “baselines”.

When the countries cannot resolve an agreement, as between Greece and Turkey, then they must turn to International Tribunal or International Arbitration where the “equitable principle” is applied in order to find a solution. Unfortunately, Turkey does not want either, and in so doing, she confirms the “fair” approach of Greece.

Greece, as far as her Territorial Waters is concerned, has the legal right to extend them from 6 (fig.7) to 12N.M. (fig.8) because:

This right is according to Common Law, International Law, and international conventions (Geneva 1958 and Montego Bay 1982).

She is an independent, and free country and she cannot accept both limits and threats on exercising sovereignty over her own Territorial Waters.

The extension is a legal action and does not demand the consent of any other country.

The extension does not influence the right of other countries for “transit passage”.

The limit of 12N.M. constitutes the “golden mean” for the international community because it satisfies the legal interests of the off-shore countries.

It ensures with the safer way the unity and cohesion of the islands with continental Greece contributing to National Security and Defense.

As far as the Turkish claims is concerned, Christos Rozakis, Professor of Athens University, said: “ while Turkey did not sanction the new convention, it remains a third country that is not influenced by its (convention) regulations....Turkish policy over the extension of Territorial Waters of Greece must rather be governed by other motives”. Indeed, in April 1973, Turkey signed an agreement with Soviet Union according to which the Territorial Waters of both countries in Black Sea are defined to 12N.M. Also, when Syria extended its Territorial Waters from 12 to 35N.M. , Turkey declared that she is not going to recognize any extension beyond the 12N.M. Finally, in 1960, the Turkish

government prepared a law draft according to which (article 2) the width of her Territorial Waters will increased to 12N.M. Of course this law was never passed but it shows the *opinio juris* (perception) of Turkey about the issue. Consequently, Turkey has no stable policy over Territorial Waters but she changes it according to her interests, and there come times where she agree with international conventions and agreements, and times where she does not. Such a policy proves that Turkey is not a country that other countries can be rely on.

Recent years, Turkey based on her military capability tries to impose her perceptions over neighbor countries. So, using military threat tries to prevent Greece from extending her Territorial Waters, but she forgets that military power depends on economy, and her economy goes down day by day that means in the future she may not have the same power as today. Turkey must understand that, in the New World Order, the use of force as first means, to promote her interests, is reprehensible by all countries and especially by United States, which keeps good relationships with both Greece and Turkey.

In conclusion, the problem is that Greece has the right of extension its Territorial Waters to 12N.M. while Turkey declares that she will go to war if Greece does it. The possible solutions to the problem, from my point of view, are four. The first, is war that should be avoided by both countries, especially from Turkey, because of the huge cost in money and Turkey's economy cannot afford it, while Greece tries to become a powerful member of European Union being based on its growing economy. The Hague Tribunal is the second and best solution, but unfortunately Turkey rejected it. The third solution is that Greece will wait for Turkish military capability degradation and then she will apply the Montego Bay Convention. The fourth solution is through the channel of European

Union (EU) of which Greece is member while Turkey not, but she is eager to become. According to the rules of EU, Greece has the right of “veto” of all issues into EU, an ace in her sleeve, and consequently she can allow or not Turkey to become a member. So, Greece having a powerful diplomatic means and being supported by the other EU members she will achieve to extend her Territorial Waters to 12N.M. Of course, whichever the solution chosen by the government will be, it must follow the rules and procedures of both International and Sea Law avoiding every action which may disturb the peace in the area. Finally, I believe that United States can play a major role in the problem influencing Turkey to stop her illegal and irrational claims and threats against Greece, and that the only way for resolving differences between two countries is the international legal procedures such as Hague Tribunal.

In this paper I have examined all the aspects of the International Law and especially the rules concerning the Territorial Waters and “innocent passage”. It has proved that, according to the new convention of Montego Bay in 1982, Greece has the right to extend her Territorial Waters to 12N.M., increasing her sovereignty over the bigger part of the Aegean Sea.

Appendix A

Figures

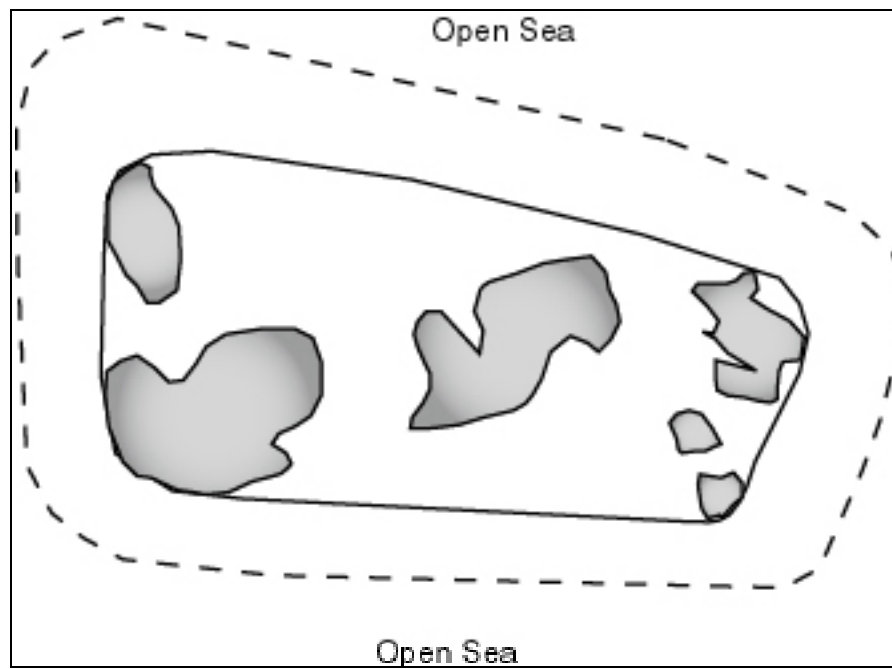


Figure 1: Archipelago regime.

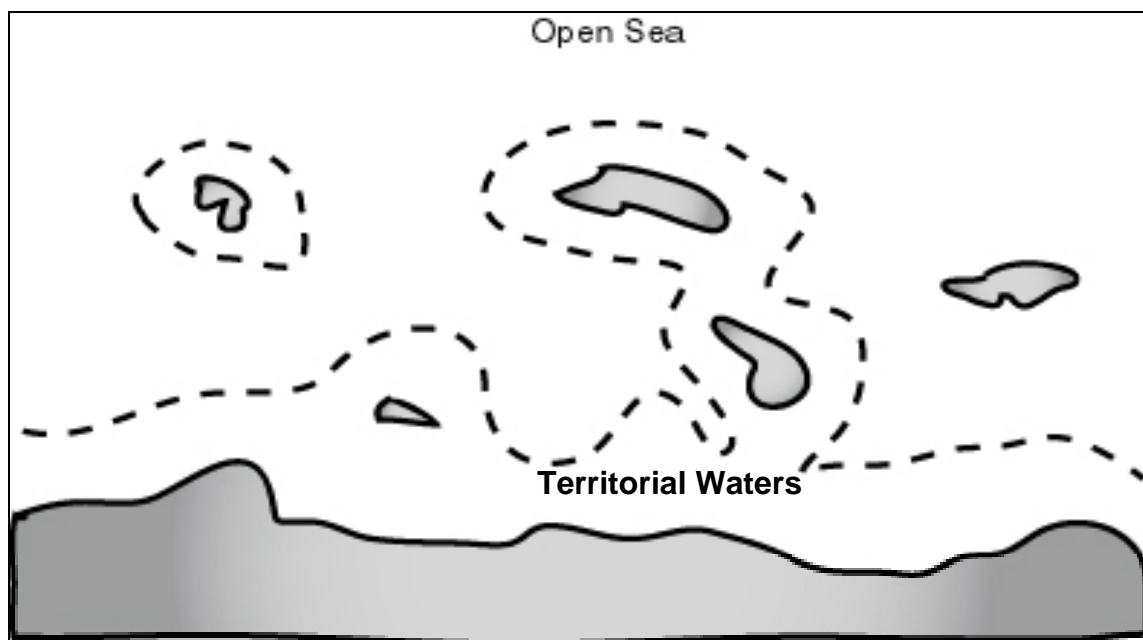


Figure 2: Territorial Waters.

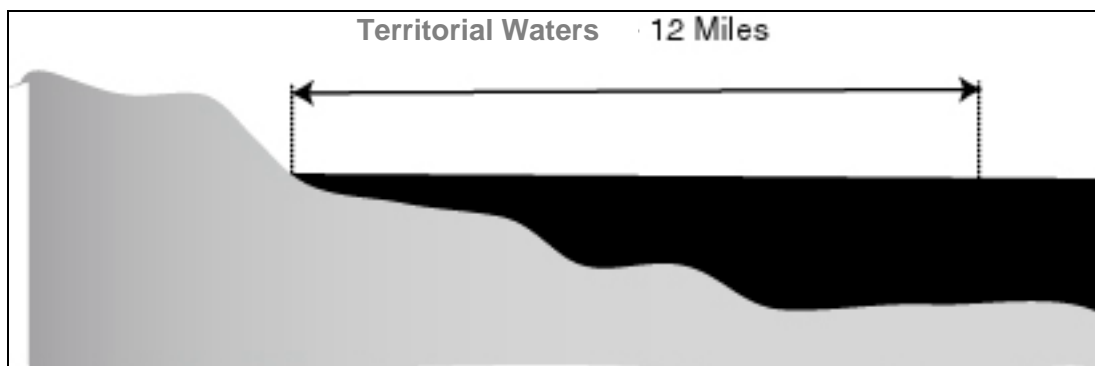


Figure 3: Sovereignty of the off-shore country.

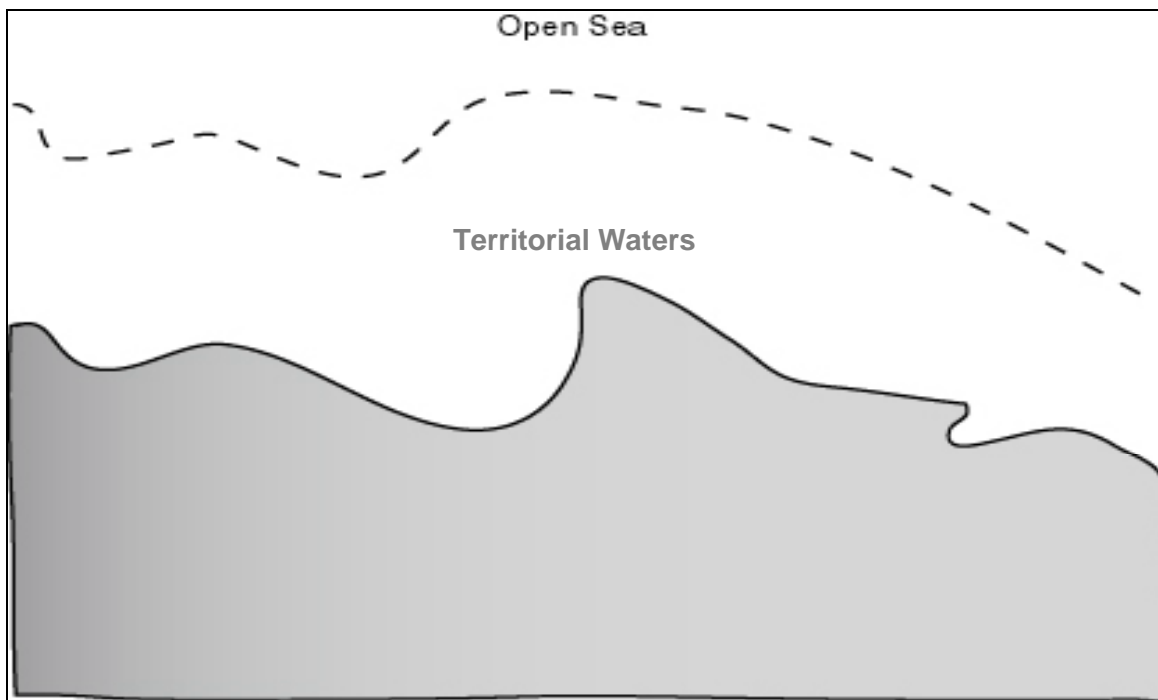


Figure 4: Normal baseline method.

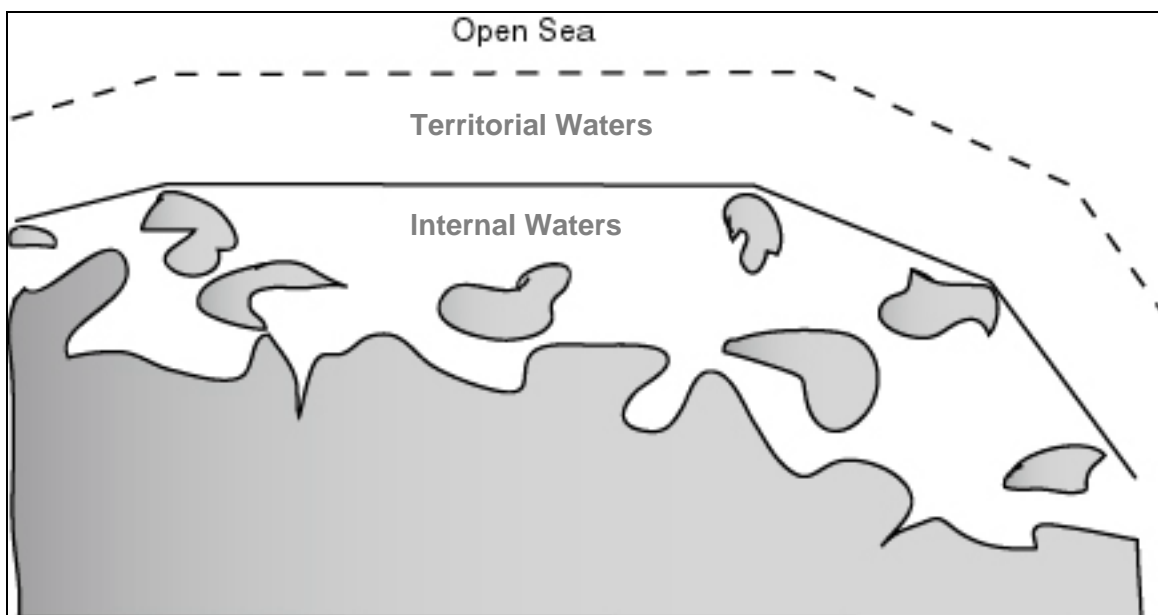


Figure 5: Straight baseline method.

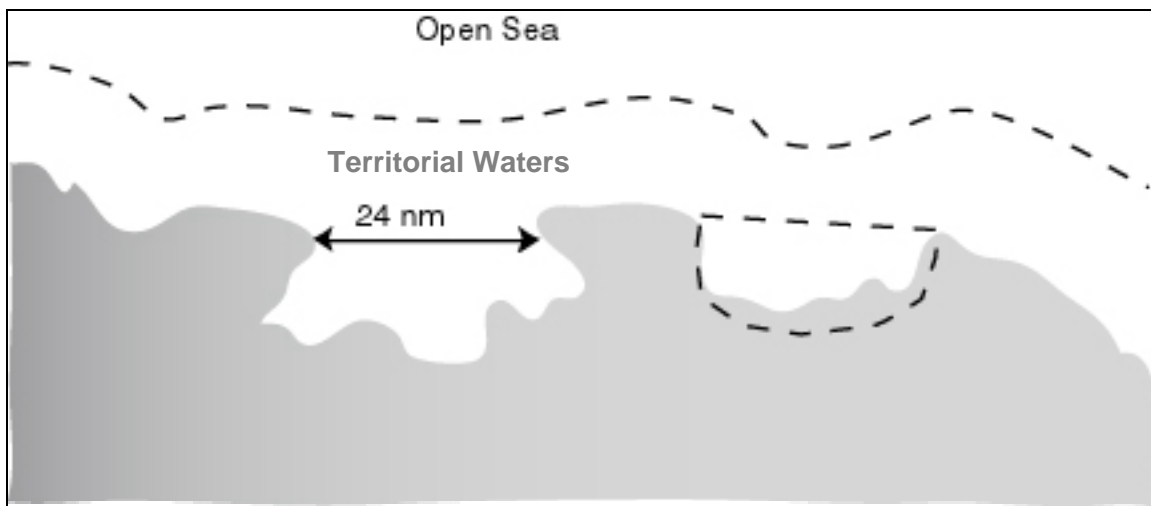


Figure 6: Straight baseline method

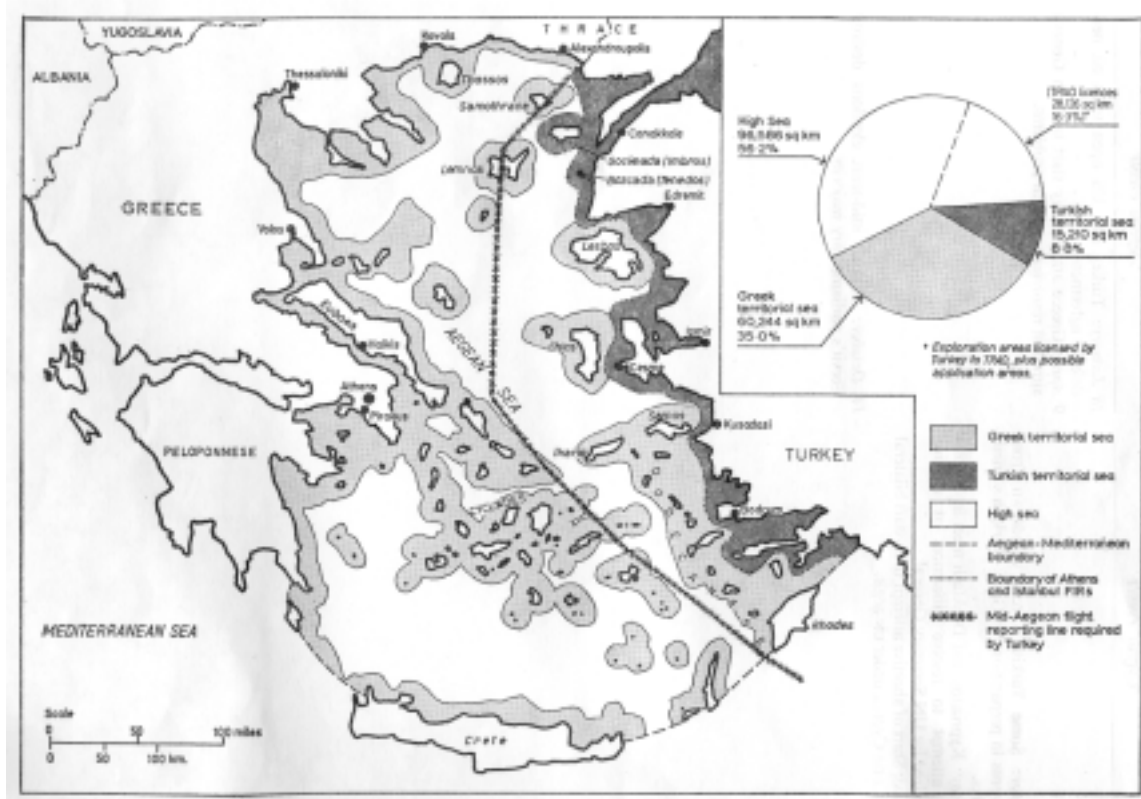


Figure 7: Territorial Waters of Greece – 6N.M.

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